



## **DEPARTMENT OF THE TREASURY**

### **Alcohol and Tobacco Tax and Trade Bureau**

#### **27 CFR Parts 4, 5, 19, 24, 26, and 27**

**[Docket No. TTB-2022-0004; Notice No. 210]**

**RIN 1513-AC86**

### **Standards of Fill for Wine and Distilled Spirits**

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this document, the Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to amend the regulations governing wine and distilled spirits containers. TTB is proposing to add 10 additional authorized standards of fill for wine, along with related technical and other harmonizing changes. TTB also is considering, as an alternative, eliminating all but a minimum standard of fill for wine containers and all but a minimum and maximum for distilled spirits containers, thus potentially eliminating unnecessary regulatory requirements, reducing barriers to competition, and providing consumers broader purchasing options.

**DATES:** Comments must be received on or before [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may electronically submit comments to TTB on this proposal, and view copies of this document, its supporting materials, and any comments TTB receives on it within Docket No. TTB-2022-0004 as posted at <https://www.regulations.gov>. A direct link to that docket is available on the TTB website at <https://www.ttb.gov/laws-and-regulations/all-rulemaking> under Notice

No. 210. Alternatively, you may submit comments via postal mail to the Director, Regulations and Ruling Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Box 12, Washington, DC 20005. Please see the **Public Participation** section of this document for further information on the comments requested regarding this proposal and on the submission, confidentiality, and public disclosure of comments.

**FOR FURTHER INFORMATION CONTACT:** Caroline Hermann, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Rulings Division; telephone 202–453–1039, ext. 256.

**SUPPLEMENTARY INFORMATION:**

**Background**

*TTB Authority*

The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers regulations setting forth standards of fill for containers of beverage distilled spirits and wine products distributed within the United States.

The authority to establish these standards is based on two provisions of law: (1) Section 5301(a) of the Internal Revenue Code of 1986 (IRC), codified at 26 U.S.C. 5301(a) in the case of distilled spirits, and (2) section 105(e) of the Federal Alcohol Administration Act (FAA Act), codified at 27 U.S.C. 205(e), for both distilled spirits and wine. Section 5301(a) of the IRC authorizes the Secretary of the Treasury to prescribe regulations “to regulate the kind, size, branding, marking, sale, resale, possession, use, and reuse of containers (of a capacity of not more than 5 wine gallons) designed or intended for use for the sale of distilled spirits . . .” when the Secretary determines that such action is necessary to protect the revenue. Section 105(e) of the FAA Act authorizes the Secretary of the Treasury to prescribe regulations relating to the “packaging,

marking, branding, and labeling and size and fill” of alcohol beverage containers “as will prohibit deception of the consumer with respect to such products or the quantity thereof . . . .”

TTB administers regulations setting forth the tax tolerance for containers of wine products based on sections 5041(e) and 5368 of the IRC. TTB administers the IRC and FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, as codified at 6 U.S.C. 531(d). In addition, the Secretary of the Treasury has delegated certain administrative and enforcement authorities to TTB through Treasury Department Order 120–01.

#### *Current Standards of Fill for Wine*

The standards of fill for wine are contained in subpart H of part 4 of the TTB regulations (27 CFR part 4). The term “standard of fill” is used in the TTB regulations and in this document to refer to the authorized amount of liquid in the container, rather than the size or capacity of the container itself. For better readability, however, this document sometimes uses the terms “size” or “container size” and “standards of fill” interchangeably. Within subpart H, paragraph (a) of § 4.72 (27 CFR 4.72(a)) authorizes the use of the following metric standards of fill for containers, in addition to those described in paragraph (b) which are discussed further below:

- 3 liters;
- 1.5 liters;
- 1 liter;
- 750 milliliters;
- 500 milliliters;
- 375 milliliters;
- 355 milliliters;

- 250 milliliters;
- 200 milliliters;
- 187 milliliters;
- 100 milliliters; and
- 50 milliliters.

Paragraph (b) of § 4.72 states that wine may be bottled or packed in containers of 4 liters or larger if the containers are filled and labeled in quantities of even liters (4 liters, 5 liters, 6 liters, etc.).

#### *Current Standards of Fill for Distilled Spirits*

The standards of fill for distilled spirits are contained in subpart K of part 5 of the TTB regulations (27 CFR part 5). Note that these standards of fill were contained in subpart E of part 5 until March 11, 2022, when the reorganization of part 5 went into effect pursuant to TTB's recent final rule, Modernization of the Labeling and Advertising Regulations for Distilled Spirits and Malt Beverages (T.D. TTB-176, February 9, 2022, 87 FR 7526).

Within subpart K, paragraph (a)(1) of § 5.203 (27 CFR 5.203(a)(1)) specifies the following metric standards of fill for containers other than those described in paragraph (a)(2) of that section:

- 1.8 Liters.
- 1.75 Liters.
- 1 Liter.
- 900 mL.
- 750 mL.
- 720 mL.
- 700 mL.
- 375 mL.

- 200 mL.
- 100 mL.
- 50 mL.

In the case of distilled spirits in metal containers that have the general shape and design of a can, that have a closure which is an integral part of the container, and that cannot be readily reclosed after opening, paragraph (a)(2) of § 5.203 authorizes the use of the following metric standards of fill:

- 355 mL.
- 200 mL.
- 100 mL.
- 50 mL.

In addition to the metric standards specified above, § 5.203 contains provisions regarding tolerances (discrepancies between actual and stated fill), unreasonable shortages in fill, and distilled spirits bottled or imported before January 1, 1980, and marketed or released from customs custody on or after that date (the date on which the U.S. volumetric standards were replaced by the § 5.203 metric standards).

### **Notice Nos. 182 and 183**

On July 1, 2019, TTB published in the **Federal Register** Notice No. 182, Elimination of Certain Standards of Fill for Wine, and Notice No. 183, Elimination of Certain Standards of Fill for Distilled Spirits; Amendment of Malt Beverage Net Content Labeling Regulation (84 FR 31257 and 84 FR 31264). The two documents proposed to eliminate most standards of fill for wine and distilled spirits. Both documents proposed to maintain a minimum standard of fill of 50 milliliters to ensure sufficient space on the container for required labeling. Notice No. 183 also proposed a maximum standard of fill of 3.785 liters (one gallon) for

distilled spirits, which corresponds to the FAA Act definition of a bulk container for distilled spirits, codified at 27 U.S.C. 206(c). In addition, the documents also sought comments on the relative merits of alternatives, such as adding new authorized standards of fill.

Notice No. 182 described a number of petitions and inquiries that TTB had received over the course of several years requesting the approval of new standards of fill for wine. TTB requested comments on adding the requested sizes. TTB addressed the comments it had received and added certain of the proposed standards of fill to the TTB regulations through publication of a final rule, T.D. TTB–165, on December 29, 2020 (85 FR 85514).

In the final rule, TTB also described an agreement between the United States and Japan that included a commitment for the United States to engage in rulemaking on certain standards of fill, described more fully below. TTB stated in the final rule that TTB would conduct additional rulemaking to propose the addition of new standards of fill for wine, including the 180, 300, 360, 550, and 720 milliliters and 1.8 liters sizes. Japanese government entities and Japanese industry associations requested the addition of those sizes during the comment period for Notice No. 182, and they were included in a Side Letter signed as part of the U.S.–Japan Trade Agreement.

Given that TTB is requesting comment on additional wine sizes pursuant to a Side Letter to the U.S.–Japan Trade Agreement, this document provides a new opportunity for commenters to provide information on three wine standards of fill that TTB proposed in Notice No. 182, but did not incorporate into the regulations in the final rule. TTB received only two, one, and zero comments on the 620 milliliters, 700 milliliters, and 2.25 liters sizes, respectively. TTB found that these comments did not provide sufficient information to make a

determination on these sizes, and therefore TTB did not incorporate these sizes into the regulations at that time. TTB summarizes the petition and inquiries for those sizes below.

#### *620 Milliliters*

TTB has received several inquiries over the years regarding the importation of the French product known as “vin jaune” (“yellow wine” in English). Vin jaune is made in the Jura region of France, using a technique similar to that used for making sherry. In accordance with French and European Union regulations, it must be sold in a 620-milliliter bottle. Since 620 milliliters is not an authorized size in § 4.72, vin jaune cannot be imported into the United States in a container with a 620 milliliter standard of fill. The two commenters to Notice No. 182 who specifically addressed this size stated generally that the 620 milliliters size is available internationally and its approval would facilitate trade. After the completion of Notice No. 182, a number of U.S. importers submitted petitions for the 620 milliliters size to TTB. The petitions state that vin jaune is historically and currently bottled in the 620 milliliters size and request the change so that U.S. importers can legally import the wine in the traditional 620 milliliter size.

#### *700 Milliliters*

TTB has received inquiries from foreign governments regarding the 700 milliliter size for wine. Among them was a 2007 request from the Government of Moldova asking that TTB waive the standards of fill requirements for importations of Moldovan wine. At the time, Moldova reported that it had over a million bottles of aged wine in its National Treasury of Wine that could not be sold in the United States due to the U.S. bottle size limitations. Also in 2007, the Government of Georgia requested that TTB add the 700-milliliter bottle to the authorized standards of fill. It stated that the 700-milliliter bottle was a standard size in the

former Soviet Union, and the addition of the 700-milliliter standard of fill in the TTB regulations would eliminate a restriction on the sale of Georgian wines in the United States. A commenter to Notice No. 182 recommended approval of the 700 milliliters size because it is consistent with containers available internationally.

### *2.25 Liters*

TTB received a petition from an importer of boxed wine requesting that the agency authorize a standard of fill of 2.25 liters for wine containers. The importer stated that such a container would significantly reduce the environmental impact of wine packaging because it holds as much as three 750-milliliter wine bottles at half the weight of such bottles. TTB received no comments on Notice No. 182 specifically addressing the 2.25 liters size.

### **New Petition for 330 Milliliters**

After the publication of T.D. TTB–165, TTB received a petition from a South African wine exporter requesting the approval of 330 milliliters as a standard of fill for wine. The petitioner stated that 330 milliliters is the standard can size for beer and soda products in South Africa and in most European countries, unlike in the U.S. where the standard size is 355 milliliters. The petitioner states they would like to export to the United States but cannot procure cans in the 355 milliliters size in South Africa.

### **U.S.–Japan Trade Agreement**

On October 7, 2019, the United States and Japan reached an agreement (the Agreement) on market access for certain agriculture and industrial goods. On December 30, 2019, the U.S. published a document in the **Federal Register** (84 FR 72187) to implement the Agreement, effective January 1, 2020. As part of the Agreement, the United States Government reached a Side Letter

agreement with Japan dated October 7, 2019, which addresses issues related to alcohol beverages, including standards of fill (“Side Letter”). See [https://ustr.gov/sites/default/files/files/agreements/japan/Letter\\_Exchange\\_on\\_Alcoholic\\_Beverages.pdf](https://ustr.gov/sites/default/files/files/agreements/japan/Letter_Exchange_on_Alcoholic_Beverages.pdf). The Side Letter states that the U.S. Department of the Treasury will take final action on Notice Nos. 182 and 183. If the final action does not address certain sizes—180, 300, 360, 550, and 720 milliliters and 1.8 liters for wine, and 700, 720, and 900 milliliters and 1.8 liters for distilled spirits—then the U.S. Department of the Treasury shall undertake new rulemaking proposing those sizes, and take final action in respect to that rulemaking. The Side Letter took effect with the U.S.–Japan Trade Agreement, which entered into force on January 1, 2020.

The distilled spirits sizes listed in the Side Letter were all referenced in Notice No. 183, and TTB described in that document the petitions from three Japanese trade associations and a Japanese government agency for those sizes. The same entities submitted comments that supported the elimination of standards of fill generally, but further stated that if the standards are not eliminated they support the approval of their petitioned-for sizes. The wine sizes listed in the Side Letter were not referenced in Notice No. 182, as TTB had not previously received petitions for those sizes. TTB did receive comments from a Japanese trade association and a Japanese government agency proposing the approval of those sizes. The two comments supported the elimination of the standards of fill, but requested the approval of the 180, 300, 360, 550, and 720 milliliters and 1.8 liters sizes for wine if the standards of fill for wine were not eliminated. The two commenters did not provide any reasons that TTB should approve these specific sizes, though the Japanese government agency generally

referenced its “proactive efforts for the sound development” of Japan’s liquor industry.

Because the requested wine sizes—180, 300, 360, 550, and 720 milliliters, and 1.8 liters—were not referenced in Notice No. 182, TTB is proposing the addition of those sizes to § 4.72 in this notification to ensure that the public is given ample opportunity to provide comment on the sizes.

### **Competition Report**

On February 9, 2022, the Department of the Treasury released a report, “Competition in the Markets for Beer, Wine, and Spirits,” that recommended rulemaking to “again consider eliminating the standards of fill requirements.” See Treasury Report on Competition in the Markets for Beer, Wine, and Spirits (February 9, 2022), available at <https://home.treasury.gov/system/files/136/Competition-Report.pdf>. That report, produced in response to Executive Order 14036, “Promoting Competition in the American Economy” (published July 9, 2022, at 86 FR 36987), noted that “[c]ontainer size requirements can be a barrier to innovation and competition, insofar as producers must conform their packaging to the Treasury-mandated sizes.” TTB has received questions regarding standards of fill from industry members struggling to source compliant containers in the current market.

### **TTB Proposals**

#### *Proposed Standards of Fill (Alternative 1)*

For the reasons described above, TTB is proposing to add the six standards of fill for wine listed in the Side Letter discussed above—180, 300, 360, 550, and 720 milliliters, and 1.8 liters—to § 4.72 as authorized standards of fill for wine. TTB is also proposing to add the 330, 620, and 700 milliliters and 2.25 liters sizes to § 4.72 as authorized standards of fill for wine. TTB is

specifically interested in comments that address whether the proposed sizes would result in consumer confusion regarding the quantity of wine in the container.

*Eliminating the Standards of Fill (Alternative 2)*

TTB also seeks comment on an alternative of eliminating the existing standards of fill for wine and distilled spirits, except to maintain in the regulations a minimum standard of 50 milliliters for both wine and distilled spirits and a maximum standard of fill of 3.785 liters for distilled spirits. Conforming edits would also be required in 27 CFR parts 19, 26, and 27.

TTB believes a minimum container size is needed to ensure sufficient space on the container for required labeling. TTB believes a maximum container size also is needed to maintain the distinction between bottled and bulk distilled spirits products. See also 27 U.S.C. 206(c). However, TTB is considering eliminating the standards of fill within those limits for many of the same reasons it described in previous notices of proposed rulemaking, “Elimination of Certain Standards of Fill for Wine” (Notice No. 182, July 1, 2019, 84 FR 31257) and “Elimination of Certain Standards of Fill for Distilled Spirits; Amendment of Malt Beverage Net Contents Labeling Regulation” (Notice No. 183, July 1, 2019, 84 FR 31264):

1. Elimination of the existing standards of fill would address the recent petitions on this issue, would eliminate the need for industry members to petition for additional authorizations if marketplace conditions favor different standards in the future, and would eliminate requirements that restrict competition and the movement of goods in domestic and international commerce.

2. It would address concerns that the current standards of fill unnecessarily limit manufacturing options and consumer purchasing options,

particularly where consumers may seek smaller containers to target a specific amount of consumption.

3. TTB believes that current labeling requirements regarding net contents (see 27 CFR 4.32(b)(2), 4.37, 5.63(b)(3), and 5.70) and those regarding the design and fill of containers (see 27 CFR 4.71 and 5.202) may provide consumers with adequate information about container contents.

4. Limiting standards of fill is no longer necessary to ensure accurate calculation of tax liabilities or to protect the revenue. TTB verifies tax liability on the basis of a producer's production and removal records, and TTB believes that allowing additional standards of fill would not undermine its efforts in this regard. TTB's predecessor agency, the Bureau of Alcohol, Tobacco and Firearms (ATF), and TTB previously took the position that limiting the number of bottle sizes protected the revenue by facilitating accurate tax computations. In *Goldstein v. Miller*, 488 F.Supp. 156, 171 (D. Md. 1980), aff'd 649 F.2d 863 (4th Cir. 1981), the court reviewed that position and concluded that limiting standards of fill was reasonably related to the collection of the revenue, though it also noted that ATF had the discretionary power to withdraw or amend the requirements. The litigation arose shortly after the enactment of the all-in-bond system of tax payment for distilled spirits under the Distilled Spirits Tax Revision Act of 1979, Title VIII of Public Law 96-39, 96th Cong., 1st Sess. Under this system, the tax was calculated at the time of the removal of the bottled distilled spirits from the distilled spirits plant rather than at the early bulk stages before bottling. Due to the implementation of the system, ATF was especially concerned about maintaining standards of fill at that time, as a back-up to the then new all-in-bond system, whose efficacy was untested. The all-in-bond system has now been in place for over 40 years. Audit experience since implementation of the all-in-bond

system and since the Goldstein litigation leads TTB to believe that the limitations on standards of fill are no longer necessary for revenue protection purposes.

In the subsequent final rule, T.D. TTB-165 (December 29, 2020, 85 FR 85514), TTB authorized seven new standards of fill for wine, four new standards of fill for distilled spirits, and did not eliminate the standards of fill. Some commenters contended that eliminating the standards of fill would cause consumer confusion and potentially lead to a proliferation of differing State container size requirements that could cause further consumer confusion. Commenters also expressed concern about significant market disruption. Based on these comments, TTB declined at that time to eliminate all standards of fill but instead authorized additional specific sizes.

However, in light of the several additional requests for yet more sizes in the short time since additional sizes were last adopted, as well as heightened concern that standards of fill can impose barriers to competition, TTB is again considering eliminating the standards of fill. Although TTB acknowledges that some commenters suggested there would be consumer confusion, TTB is not aware of consumer confusion related to container sizes of malt beverages, for which there is no standard of fill requirement. Moreover, with the addition of the eleven new standards of fill authorized with the final rules published in December 2020, and the potential of ten more new standards to address international agreements and petitions described in this document, the value of the defined standards may be of increasingly fleeting utility to consumers. Any potential for confusion may also be mitigated or eliminated by the net contents labeling that is mandatory. Moreover, concerns regarding confusion should be weighed against other concerns, including the possibility that container size requirements can be a barrier to innovation and competition. TTB again seeks comments on this

matter generally, and also specifically with regard to whether the potential impact on competition of continuing to restrict standards of fill outweighs potential consumer confusion.

### *Statement of U.S. Equivalent Net Contents*

Under the TTB regulations, wine labels must bear a statement of net contents. The regulations at 27 CFR 4.37(b) provide that the mandatory net contents statement may include, in addition to the required metric measure, the equivalent volume in United States measure. If the U.S. measure is shown on the label, it must appear as stated in § 4.37(b) for each standard of fill authorized in § 4.72.

When TTB published T.D. TTB–165, it did not amend § 4.37(b) to add the equivalent U.S. measures for the newly approved standards of fill of 355 milliliters, 250 milliliters, and 200 milliliters. TTB therefore plans to correct this oversight in this document by including in the proposed regulations the U.S. measures for each of the three new standards of fill. The U.S. measures will be shown as follows, in the format currently required by § 4.37(b): 355 ml (12.0 fl. oz.); 250 ml (8.5 fl. oz.); and 200 ml (6.8 fl. oz.).

The proposed regulations also include the addition to § 4.37(b) of U.S. equivalents for each standard of fill that is proposed in this document. For readability, the proposed regulatory text will list the sizes in a table format. The proposed sizes and their U.S. equivalents are as follows:

- 2.25 liters (76.1 fl. oz.);
- 1.8 liters (60.9 fl. oz.);
- 720 milliliters (24.3 fl. oz.);
- 700 milliliters (23.7 fl. oz.);
- 620 milliliters (21.0 fl. oz.);
- 550 milliliters (18.6 fl. oz.);
- 360 milliliters (12.2 fl. oz.);
- 330 milliliters (11.2 fl. oz.);

- 300 milliliters (10.1 fl. oz.); and
- 180 milliliters (6.1 fl. oz.).

### *Wine Container Fill Tolerances*

Section 5041(e) of the IRC authorizes the Secretary of the Treasury to prescribe by regulation tolerances for wine containers. TTB regulations at 27 CFR 24.255(b) require that wine proprietors fill bottles or other containers as nearly as possible to the amount shown on the container. TTB regulations at 27 CFR 24.255(c) require that “[t]he net contents of bottles or other containers of untaxed wine in the same tax class filled during six consecutive tax return periods . . . shall not vary by more than 0.5 percent from the net contents as stated on the bottles or other containers.” TTB regulations at § 24.255(b) clarify that in no event may the amount of wine in any one specific container exceed the fill tolerances listed in the regulation based on the container’s size. Note that 27 CFR part 4 contains further clarification on fill tolerance.

When TTB published T.D. TTB–165, it did not amend § 24.255(b) to add fill tolerances for the newly approved standards of fill of 355 milliliters, 250 milliliters, and 200 milliliters. Additionally, when ATF published T.D. ATF–303 on October 23, 1990 (55 FR 42710), it did not amend § 24.255(b) to add a fill tolerance for the newly approved standard of fill of 500 milliliters. TTB therefore plans to correct these oversights in this document by adding fill tolerances for these sizes to § 24.255(b). Based on the existing tolerances, TTB is proposing the following tolerances for these sizes:

- 2.5 percent for 500 milliliters;
- 3 percent for 355 milliliters;
- 4 percent for 250 milliliters; and
- 4 percent for 200 milliliters.

TTB is also proposing the addition of tolerances to § 24.255(b) for most of the standards of fill that are proposed in this document. TTB does not need to add additional tolerances for the proposed sizes of 2.25 liters and 1.8 liters, as the current tolerance of 1.5 percent for containers that are 1.0 liter to 14.9 liters covers those sizes. For the remaining sizes proposed in this document, TTB is proposing the following tolerances:

- 2 percent for 720 milliliters;
- 2 percent for 700 milliliters;
- 2 percent for 620 milliliters;
- 2 percent for 550 milliliters;
- 3 percent for 360 milliliters;
- 3 percent for 330 milliliters;
- 3 percent for 300 milliliters; and
- 4.5 percent for 180 milliliters.

For readability, the proposed regulatory text will include ranges of sizes, rather than listing most of the sizes individually, as the regulation currently does. The proposed regulatory text also includes some additional minor edits for readability.

#### *Conforming Edits*

TTB is also proposing a number of conforming edits to parts 19, 26, and 27 of the TTB regulations (27 CFR parts 19, 26, and 27) to reflect the changes proposed in this rulemaking and the reorganization of parts 5 and 7 (27 CFR parts 5 and 7) that went into effect pursuant to TTB's recent final rule, *Modernization of the Labeling and Advertising Regulations for Distilled Spirits and Malt Beverages* (T.D. TTB-176, February 9, 2022, 87 FR 7526). TTB also is making additional, nonsubstantive amendments to conform the regulations

described in this document to the current regulatory authority citation

requirements of the Office of the Federal Register.

## **Public Participation**

### *Comments Sought*

TTB requests comments on the proposal to add some or all of the additional standards of fill for wine described in this document, and the alternative of eliminating all but a minimum standard of fill for wine. TTB also requests comments on the proposal to eliminate all but a minimum and maximum standard of fill for distilled spirits. In particular, TTB requests comments on whether it should authorize the proposed sizes (or eliminate the standards of fill altogether) based on the considerations relevant to the FAA Act, such as whether the proposed sizes would result in consumer confusion. TTB also welcomes comments on the proposed container fill tolerances for wine. TTB further welcomes comments on the appropriate number of bottles per case to list in the table at 27 CFR 24.300(a)(1) for the proposed new container sizes, and the existing container sizes not currently listed there. Any person submitting comments may present such data, views, or arguments as he or she desires. Comments that provide the factual basis supporting the views or suggestions presented will be particularly helpful in developing a reasoned regulatory decision on this matter.

### *Submitting Comments*

You may submit comments on this proposal as an individual or on behalf of a business or other organization via the Regulations.gov website or via postal mail, as described in the **ADDRESSES** section of this document. Your comment must reference Notice No. 210 and must be submitted or postmarked by the closing date shown in the **DATES** section of this document. You may upload or

include attachments with your comment. You also may submit a comment requesting a public hearing on this proposal. The TTB Administrator reserves the right to determine whether to hold a public hearing.

#### *Confidentiality and Disclosure of Comments*

All submitted comments and attachments are part of the rulemaking record and are subject to public disclosure. Do not enclose any material in your comments that you consider confidential or that is inappropriate for disclosure.

TTB will post, and you may view, copies of this document, selected supporting materials, and any comments TTB receives about this proposal within the related Regulations.gov docket. In general, TTB will post comments as submitted, and it will not redact any identifying or contact information from the body of a comment or attachment.

Please contact TTB's Regulations and Rulings division by email using the web form available at <https://www.ttb.gov/contact-rrd>, or by telephone at 202–453–2265, if you have any questions regarding how to comment on this proposal or to request copies of this document, its supporting materials, or the comments received in response.

### **Regulatory Analysis and Notices**

#### *Regulatory Flexibility Act*

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. If adopted, the amendments would provide bottlers and importers of wine and distilled spirits with additional flexibility to use new bottle sizes if they so choose. The proposed regulation would impose no new reporting, recordkeeping, or other administrative requirement. Therefore, no regulatory flexibility analysis is required.

#### *Paperwork Reduction Act*

The collection of information in this rule has been previously approved by the Office of Management and Budget (OMB) under the title “Labeling and Advertising Requirements Under the Federal Alcohol Administration Act,” and assigned control number 1513–0087. This proposed regulation would not result in a substantive or material change in the previously approved collection action, since the nature of the mandatory information that must appear on labels affixed to the container remains unchanged.

#### *Executive Order 12866*

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

#### **Drafting Information**

Jennifer Berry of the Regulations and Rulings Division drafted this document.

#### **List of Subjects**

##### *27 CFR Part 4*

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers.

##### *27 CFR Part 5*

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers.

##### *27 CFR Part 19*

Alcohol and alcoholic beverages, Alcohol fuel plants, Alternation, Application procedures, Distilled spirits plants, Permit requirements, Registration

requirements, Reporting and recordkeeping requirements, Security requirements, Trade names, Vinegar plants.

#### *27 CFR Part 24*

Administrative practice and procedure, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Vinegar, Warehouses, Wine.

#### *27 CFR Part 26*

Alcohol and alcoholic beverages, Caribbean basin initiative, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Virgin Islands, Warehouses.

#### *27 CFR Part 27*

Alcohol and alcoholic beverages, Beer, Cosmetics, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Wine.

### **Proposed Amendments to the Regulations**

#### **[Alternative 1]**

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR parts 4 and 24 as follows:

#### **PART 4—LABELING AND ADVERTISING OF WINE**

1. The authority citation for part 4 continues to read as follows:

**Authority:** 27 U.S.C. 205, unless otherwise noted.

2. In § 4.37, revise paragraph (b)(1) to read as follows:

#### **§ 4.37 Net contents.**

\* \* \* \* \*

(b) \* \* \*

(1) For the metric standards of fill shown in the following table, the equivalent U.S. measures are:

Table 1 to Paragraph (b)(1)

<b>Metric Measure</b>	<b>Equivalent U.S. Measure</b>
3 liters (L)	101 fluid ounces (fl. oz.)
2.25 L	76.1 fl. oz
1.8 L	60.9 fl. oz.
1.5 L	50.7 fl. oz.
1 L	33.8 fl. oz.
750 milliliters (mL)	25.4 fl. oz.
720 mL	24.3 fl. oz.
700 mL	23.7 fl. oz.
620 mL	21.0 fl. oz.
550 mL	18.6 fl. oz.
500 mL	16.9 fl. oz.
375 mL	12.7 fl. oz.
360 mL	12.2 fl. oz.
355 mL	12.0 fl. oz.
330 mL	11.2 fl. oz.
300 mL	10.1 fl. oz.
250 mL	8.5 fl. oz.
200 mL	6.8 fl. oz.
187 mL	6.3 fl. oz.
180 mL	6.1 fl. oz.
100 mL	3.4 fl. oz.
50 mL	1.7 fl. oz.

\* \* \* \* \*

3. In § 4.72, revise paragraph (a) to read as follows:

**§ 4.72 Metric standards of fill.**

(a) *Authorized standards of fill.* The standards of fill for wine are the following:

Table 1 to Paragraph (a)

3 liters	375 milliliters
2.25 liters	360 milliliters
1.8 liters	355 milliliters
1.5 liters	330 milliliters
1 liter	300 milliliters
750 milliliters	250 milliliters
720 milliliters	200 milliliters
700 milliliters	187 milliliters
620 milliliters	180 milliliters
550 milliliters	100 milliliters
500 milliliters	50 milliliters

\* \* \* \* \*

## PART 24—WINE

4. The authority citation for part 24 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5121, 5122–5124, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

5. In § 24.255:

- a. Revise paragraph (b); and
- b. Remove the parenthetical authority citation at the end of the section.

The revision reads as follows:

### § 24.255 Bottling or packing wine.

\* \* \* \* \*

(b) *Bottle or other container fill.* (1) Proprietors of bonded wine premises and taxpaid wine bottling house premises must fill bottles or other containers as nearly as possible to conform to the amount shown on the label or blown in the

bottle or marked on any container other than a bottle. However, in no event may the amount of wine contained in any individual bottle, due to lack of bottle uniformity, vary from the amount stated more than plus or minus:

- (i) 1.0 percent for 15.0 liters and above;
- (ii) 1.5 percent for 14.9 liters to 1.0 liter;
- (iii) 2.0 percent for 750 mL to 550 mL;
- (iv) 2.5 percent for 500 mL;
- (v) 3.0 percent for 375 mL to 300 mL;
- (vi) 4 percent for 250 mL and 200 mL;
- (vii) 4.5 percent for 187 mL to 100 mL; and
- (viii) 9.0 percent for 50 mL.

(2) In such case, there will be substantially as many bottles overfilled as there are bottles underfilled for each lot of wine bottled. Short-filled bottles or other containers of wine which are sold or otherwise disposed of by the proprietor to employees for personal consumption need not be labeled, but, if labeled, need not show an accurate statement of net contents.

\* \* \* \* \*

#### **[Alternative 2]**

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR parts 5, 19, 26, and 27 as follows:

### **PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS**

1. The authority citation for part 5 continues to read as follows:

**Authority:** 26 U.S.C. 5301, 7805, 27 U.S.C. 205 and 207.

2. In § 5.203, revise paragraph (a) to read as follows:

### **§ 5.203 Standards of fill (container sizes).**

(a) *Authorized standards of fill.* Subject to the tolerances allowed under paragraph (b) of this section and the headspace prescribed in § 5.202(b), distilled spirits containers, other than bulk, may not contain more than 3.785 liters or less than 50 milliliters.

\* \* \* \* \*

## **PART 19—DISTILLED SPIRITS PLANTS**

3. The authority citation for part 19 continues to read as follows:

**Authority:** 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004-5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5114, 5121–5124, 5142, 5143, 5146, 5148, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

### **§ 19.116 [Amended]**

4. In § 19.116:

a. Amend paragraph (a)(2)(iii) by removing the text “§§ 5.28” and adding, in its place, the text “§§ 5.194”; and

b. Remove the parenthetical authority citation at the end of the section.

### **§ 19.132 [Amended]**

5. In § 19.132:

a. Amend paragraph (a)(2)(iii) by removing the text “§§ 5.28” and adding, in its place, the text “§§ 5.194”; and

b. Remove the parenthetical authority citation at the end of the section.

### **§ 19.314 [Amended]**

6. In § 19.314,

a. Amend the last sentence by removing the text “§§ 5.26 and 5.27” and adding, in its place, the text “§§ 5.192 and 5.193”.; and

b. Remove the parenthetical authority citation at the end of the section.

**§ 19.348 [Amended]**

7. In § 19.348:

a. Amend the introductory text by removing the text “§§ 5.26 and 5.27” and adding, in its place, the text “§§ 5.192 and 5.193”; and

b. Remove the parenthetical authority citation at the end of the section.

**§ 19.511 [Amended]**

8. In § 19.511,

a. Amend the first sentence by removing the text “subpart E” and adding, in its place, the text “subpart K”; and

b. Remove the parenthetical authority citation at the end of the section.

**§ 19.512 [Amended]**

9. In § 19.512,

a. Amend the first sentence by removing the text “§ 5.46” and adding, in its place, the text “§ 5.202”; and

b. Remove the parenthetical authority citation at the end of the section.

**§ 19.517 [Amended]**

10. In § 19.517,

a. Amend paragraph (a) by removing the text “§ 5.34” and adding, in its place, the text “§ 5.64”;

b. Amend paragraph (b) by removing the text “§ 5.35” and adding, in its place, the text “§§ 5.143 and 5.156”;

c. Amend paragraph (c) by removing the text “§ 5.37(a)” and adding, in its

place, the text “§ 5.65”;

d. Amend paragraph (d) by removing the text “§ 5.36(d)” and adding, in its place, the text “§ 5.66(f)”;

e. Amend paragraphs (g) and (h) by removing the text “§ 5.40” wherever it appears and adding, in its place, the text “§ 5.74”;

f. Amend paragraph (j) by removing the text “§ 5.39” and adding, in its place, the text “§ 5.72”; and

g. Remove the parenthetical authority citation at the end of the section.

#### **§ 19.519 [Amended]**

11. In § 19.519,

a. Amend the second sentence of paragraph (d) by removing the text “§ 5.22” and adding, in its place, the text “subparts F and I of part 5”; and

b. Remove the parenthetical authority citation at the end of the section.

#### **PART 26—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS**

12. The authority citation for part 26 continues to read as follows:

**Authority:** 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5111–5114, 5121, 5122–5124, 5131–5132, 5207, 5232, 5271, 5275, 5301, 5314, 5555, 6001, 6109, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

#### **§ 26.40 [Amended]**

13. In § 26.40, amend paragraph (c) by removing the text “§ 5.47a,” and adding, in its place, the text “§ 5.203”.

#### **§ 26.200 [Amended]**

14. In § 26.200:

a. Amend paragraph (d)(2) by:

i. Removing the text “27 CFR 5.51” and adding, in its text, the phrase “27

CFR 5.24 and 5.25”; and

ii. Removing the text “27 CFR 7.31” and text, in its place, the phrase “27 CFR 7.24 and 7.25”; and

b. Remove the parenthetical authority citation at the end of the section.

**§ 26.202 [Amended]**

15. In § 26.202:

a. Amend paragraph (c) by:

i. In the first sentence, removing the text “27 CFR 5.51 in the case of distilled spirits, or 27 CFR 7.31” and adding, in its place, the text “27 CFR 5.24 and 5.25 in the case of distilled spirits, or 27 CFR 7.24 and 7.25”; and

ii. In the second sentence, removing the text “27 CFR 4.40, 5.51, and 7.31” and adding, in its place, the text “27 CFR 4.40, 5.24, 5.25, 7.24, and 7.25.”;

b. Amend paragraph (d) by removing the text “27 CFR 5.52” and adding, in its place, the text “27 CFR 5.30”; and

c. Remove the parenthetical authority citation at the end of the section.

**§ 26.206 [Amended]**

16. In § 26.206, amend paragraph (c) by removing the text “§ 5.47a,” and adding, in its place, the text “§ 5.203”.

**§ 26.312 [Amended]**

17. In § 26.312,

a. Amend the first sentence by removing the text “§ 5.47 or § 5.47a” and adding, in its place, the text “§ 5.203”; and

b. Amend the second sentence by removing the text “subpart E” and adding, in its place, the text “subpart K”.

**PART 27—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER**

18. The authority citation for part 27 continues to read as follows:

Authority: 5 U.S.C. 552(a), 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5054, 5061, 5121, 5122–5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5382, 5555, 6109, 6302, 7805.

**§ 27.48 [Amended]**

**19.** In § 27.48,

**a.** Paragraph (a)(2)(ii) is amended by:

**i.** Removing the text “27 CFR 5.51” and adding, in its place, the text “27 CFR 5.24 and 5.25”; and

**ii.** Removing the text “27 CFR 7.31” and adding, in its place, the text “27 CFR 7.24 and 7.25”; and

**b.** Remove the parenthetical authority citation at the end of the section.

**§ 27.55 [Amended]**

**20.** In § 27.55,

**a.** Paragraph (c) is amended by:

**i.** In the first sentence, removing the text “27 CFR 5.51 in the case of distilled spirits, or 27 CFR 7.31” and adding, in its place, the text “27 CFR 5.24 and 5.25 in the case of distilled spirits, or 27 CFR 7.24 and 7.25”; and

**ii.** In the second sentence, removing the text “27 CFR 4.40, 5.51, and 7.31” and adding, in its place, the text “27 CFR 4.40, 5.24, 5.25, 7.24, and 7.25”;

**b.** Amend paragraph (d) by removing the text “27 CFR 5.52” and adding, in its place, the text “27 CFR 5.30”; and

**c.** Remove the parenthetical authority citation at the end of the section.

**§ 27.202 [Amended]**

**21.** In § 27.202,

**a.** Amend the first sentence by removing the text “§ 5.47a” and adding, in its place, the text “§ 5.203”; and

**b.** Amend the second sentence by removing the text “subpart E” and adding, in its place, the text “subpart k”.

Signed: April 28, 2022.

**Mary G. Ryan,**

*Administrator.*

Approved: April 28, 2022.

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